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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,949	11/27/2000	Frank M. Richmond	68050	5029

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FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

GLESSNER, BRIAN E

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

09/722,949

Applicant(s)

RICHMOND, FRANK M.

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 8, 17 and 25-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-16, 18-24 and 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

The examiner would like to acknowledge the election of Group V, figures 5 and 25. The applicant stated that all the pending claims were readable on figures 5 and 25. The examiner respectfully disagrees and contends that claims 8, 17, and 25-30 are not directed to the elected figures. Therefore, they are being withdrawn from consideration.

### ***Claim Objections***

1. Claims 10 and 18 are objected to because of the following informalities: claim 10, line 2 recites the phrase "at one". The examiner believes that the term "least" should be inserted between the terms "at" and "one". Claim 18, the examiner believes that the term "at" should be inserted before the term "least" in line 4. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 5, 12-15, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 4, 5, 13, 14, 21, and 22, the scope of the claims is indefinite because the examiner is not certain as to how many resting surfaces there are supposed to be based on the claims. The examiner is also uncertain as to the proper placement of each resting surface and guide surface. The applicant introduces a resting surface in the independent claims. Then,

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claims 4, 13, and 21 appear to introduce a second resting surface and claims 4 and 21 appear to introduce a second guide surface. Then, claims 5, 14, and 22 appear to introduce a second and a third resting surface. The examiner is not clear, based on the claim language, how many resting surfaces there are to be on the device. Therefore, the examiner will examine the claims as “best understood” until further clarification is provided. The examiner will interpret the claims as having three resting surfaces as is disclosed and shown in the drawing figures.

In regard to claims 10 and 12, the examiner is not certain if the applicant is referring to the resting surface of claim 9 or the resting surface of claim 10. Also, the examiner is not certain if the resting surface of claim 10 is the same resting surface as claim 9. Appropriate clarification is required.

3. Claim 15 recites the limitation "the guide surface" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

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122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-7, 9-16, 18-24 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Murphy (6,131,361).

In regard to claims 1 and 18, Murphy discloses a system comprising an apparatus for installing building materials comprising at least one resting surface spaced apart from a fastener 132, figure 14 of the Examiner's Attachment.

In regard to claims 9 and 10, Murphy discloses a method for installing building material comprising the steps of positioning at least one apparatus 110A (figure 16) for installing building materials, attaching the apparatus to an existing structure, i.e. the stud walls, positioning the building material 140 on a resting surface, positioning the building material to a desired location and temporarily securing the building material, i.e. the positioning apparatus temporarily secures the building material, and permanently securing the building material to the existing structure. The apparatus also comprises at least one resting surface spaced apart from a fastener 132, Examiner's Attachment. The method steps can inherently be seen in Murphy's drawing figures and his specification.

In regard to claims 2-5, 11-14, and 19-22, Murphy discloses the claimed invention, wherein the apparatus further comprises at least one guide surface, wherein the guide surface is continuous with the resting surface. The apparatus also comprises a second resting surface opposite a guide surface, and a third resting surface. All of the resting surfaces and guide surfaces "as best understood" can be seen in the Examiner's Attachment of figure 14.

In regard to claims 6, 15, and 23, Murphy discloses the claimed invention, wherein the guide surface is continuous with an elongated guide surface, Examiner's Attachment.

In regard to claims 7, 16, and 24, Murphy discloses the claimed invention, wherein the fastener is a fastener opening 132 in combination with a fastening component 150.

In regard to claim 31, Murphy discloses the claimed invention, wherein the apparatus for installing building material is made from a material selected from the group consisting of wood, metal, plastic, and combinations thereof. Murphy discloses that the material could either be metal or plastic, column 1, lines 41-45.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (6,131,361) in view of Guilmette (5,617,698).

In regard to claims 32 and 33, Murphy discloses the claimed invention, except for the use of a tee support or adjustable positioning device. Guilmette discloses the use of a tee shaped adjustable positioning device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said device into Murphy's invention, because the device will aid the user in placing the panels. The device will help the user to hold the panel until the at least one apparatus for installing building materials is moved into position to hold the

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panel. Also, the positioning device could be used as a safety device if one or more of the apparatus for installing building materials failed.

8. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (6,131,361) in view of Burgess (5,366,329).

In regard to claim 34, Murphy discloses the claimed invention, except for disclosing the use of a height block. Burgess teaches that it is known to use a height block 5b to provide a space for a drywall panel to be inserted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said height block or spacer into Murphy's invention, because the spacer will provide additional clearance between the apparatus and the studs if needed. Further, the examiner contends that the use of spacers where needed is capable of being determined by one having ordinary skill in the art.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Waters, Reicherts, Luhowyj, Brown, Cooley, Anderson, Krueger, McKinney et al., Earp, Fentz, Hermann, Brooker, Sink, Schaefer, Bryant et al., Flores, Jr. et al., Gustavson, and Ewing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

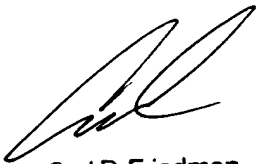
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G. *B.G.*  
April 4, 2002



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600